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June 30, 1998

Via Hand Delivery

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Comments,
MM Docket No. 93-25

Dear Ms. Salas:

PRIMESTAR, Inc. (PRIMESTAR), by counsel and pursuant to a request by the Commission staff, hereby submits the following additional comments concerning the possible rules to apply the "reasonable access" provision of Section 312(a)(7) of the Communications Act of 1934, as amended (the "Act") and the "equal opportunities" provisions of Section 315 of the Act to direct broadcast satellite (DBS) licensees as specified in Section 335 of the Act. Specifically, PRIMESTAR will address a proposal that would require DBS licensees to impose, by contract, the political broadcasting requirements of Section 312(a)(7) and Section 315 on the programming networks that license their programming to DBS operators.

PRIMESTAR believes that forcing DBS licensees to attempt to impose the political programming requirements on their programming providers is infeasible and unwarranted. Instead, PRIMESTAR believes that the political broadcasting requirements currently placed on cable and broadcast licensees can be adopted for DBS use, so long as the Commission recognizes that some modifications are necessary owing to the nature of DBS service.

I. Contractual Obligations of Program Networks

PRIMESTAR understands that the Commission is considering imposing on DBS operators an obligation to meet their political broadcasting requirements by requiring their program networks to grant federal candidates reasonable access to the their networks and to abide by the equal opportunities and lowest unit charge provisions of Section 315. This concept is similar to that employed by the Commission to ensure compliance with its closed-captioning requirements.[1] However, a brief examination of the facts demonstrates that such a model is not workable when applied to political advertising requirements.

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1 For example, the Commission imposed the closed captioning obligations on MVPDs, reasoning that the MVPDs would pass the obligation upstream to their program networks and program producers.

First, program networks supply a common programming feed to all of their affiliates, whether cable, wireless cable, SMATV or DBS systems. It would be technically impossible to make alterations in this feed so that cable and other operators receive one signal while DBS licensees receive another one with political advertising embedded in it. In fact, the Commission's proposal would require the creation of a separate feed, containing the political announcements mandated by the proposal, and distributed exclusively to DBS operators. The cost of creating a second feed exclusively for DBS use would be prohibitive.

Second, even if the technical means existed to allow for insertion of political advertisements in network feeds delivered to DBS operators, program networks would have little or no incentive to undertake the political programming obligations of DBS operators, and DBS operators would have little leverage to insist that such obligations be a condition of their agreement to carry the networks. DBS operators make up only a fraction of the program networks' customer base. The vast majority of the network audiences are delivered by cable operators. Thus, DBS licensees have virtually no bargaining power to impose Commission programming requirements on the networks which would only apply to the DBS service. Cable operators not subject to the rules implemented under Section 335 would have little incentive to allow their programming schedules to be altered in order to accommodate advertising obligations of DBS operators. Thus, unlike closed captioning, where all MVPDs have a common interest in requiring the networks to provide captioning data, the applicability of Section 335 to DBS only offers little bargaining power to DBS operators.

In conclusion, both technical and economic realities strongly militate against any attempt by the Commission to require DBS operators to fulfill their political advertising obligations by passing these obligations to their program networks.[2]

II. Applicability of Sections 315 and 312(a)(7) to DBS Facilities

PRIMESTAR believes that the application of the obligations of Sections 315 and 312(a)(7) to DBS operators is a straight-forward matter, and that the Commission's current rules under these Sections are sufficiently flexible to take in to account the nature of DBS operations.

First, with respect to the lowest unit charge obligations of Section 315, PRIMESTAR currently does not sell air time to commercial advertisers.[3] Therefore, PRIMESTAR has no commercial advertising rates against which to base the price for air time offered to political candidates. In the event PRIMESTAR offers commercial advertising time in

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2 Of course, to the extent program networks provide candidate access on their national feeds, those political announcements would be carried by the DBS operators..

3 Although PRIMESTAR does provide cross-channel promotional spots for programming networks, many of which are required by such networks' affiliation agreements with PRIMESTAR and to which PRIMESTAR attributes a value, PRIMESTAR has not established an advertising rate card for general commercial advertisers.

the future, and if PRIMESTAR sells time to political candidates, it would adhere to the lowest unit rate obligations of Section 315 in the same manner as broadcasters and cable operators.

Second, in the event that PRIMESTAR does permit a qualified candidate to use its system, PRIMESTAR would comply with the equal opportunity requirements of that Section by making air time available to other qualified candidates for that office.

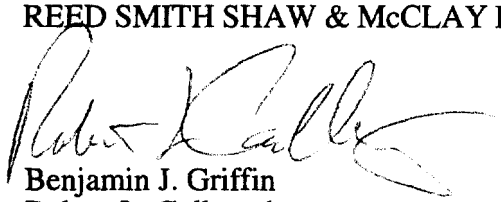
With respect to reasonable access to DBS facilities under Section 312(a)(7), PRIMESTAR continues to believe that from a spectrum and economic efficiency perspective, the provision should be limited to national federal candidates. However, in honoring reasonable access requests by a federal candidate, DBS operators should have the ability to develope charges for such access that reflect the national audience reach of the DBS services. In addition, DBS operators should have the flexibility to choose the channels on which to place political advertisements, to make reasonable determinations as to the length and time of such advertisements, and to refuse carriage or to offer counter-proposals as the circumstances warrant, pursuant to current Commission guidelines applicable to broadcasters and cable operators.

Conclusion

PRIMESTAR believes that Section 335(a) can be implemented in a manner that serves the public benefit if the Commission bears in mind the nature of DBS operations. DBS licensees have neither the technical capacity nor the economic leverage to force their program providers to sell advertising time to political candidates. Therefore, no rule should be promulgated that embraces this concept. On the other hand, the current political advertising obligations imposed on cable and broadcast operators are sufficiently flexible to be adopted to the parameters of DBS operations to govern the possible sale of air time to qualified political candidates by DBS operators without fundamental change.

Respectfully submitted,

REED SMITH SHAW & McCLAY LLP



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